



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 181019964-9283-01]

RIN 0648-XG584

Announcement of Change in Hearing Date Regarding Proposed Waiver and Regulations Governing the Taking of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of change to the hearing date and related deadlines.

SUMMARY: The hearing date previously announced in the **Federal Register** for a proposed waiver under the Marine Mammal Protection Act (MMPA) and proposed regulations governing the hunting of eastern North Pacific (ENP) gray whales by the Makah Indian Tribe in northwest Washington State, and the related deadlines for submission of testimony and motions, is being changed as noted below.

DATES: Administrative Law Judge George J. Jordan will convene a hearing on the proposed waiver and regulations on Thursday, November 14, 2019 at 1:00 p.m. PDT in the Henry M. Jackson Federal Building, 915 Second Avenue, 4th Floor Auditorium, Seattle, WA 98174.

Filing Deadlines: The presiding officer has changed certain filing deadlines from those previously published in the notice of final agenda (June 26, 2019; 84 FR 30088). The final date to submit direct testimony to rebut testimony previously submitted is now August 6, 2019. The final date for submission of direct testimony on issues of fact not

included in the notice of hearing (April 5, 2019; 84 FR 13639) is August 6, 2019, and the final date for rebuttal to such testimony is September 11, 2019. The parties may file motions to exclude any issues listed in the Final Hearing Agenda (June 26, 2019; 84 FR 30088) by August 9, 2019. Motions to exclude based on any rebuttal evidence the parties submit must be filed by August 16, 2019. The parties to this proceeding will have ten days to respond to any such motions, and additional replies will be authorized only on a showing of good cause.

ADDRESSES: The hearing will be held before Administrative Law Judge George J. Jordan of the United States Coast Guard at the Henry M. Jackson Federal Building, 915 Second Avenue, 4th Floor Auditorium, Seattle, WA 98174.

FOR FURTHER INFORMATION CONTACT: Michael Milstein, NMFS West Coast Region, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274; 503-231-6268.

SUPPLEMENTARY INFORMATION: On February 14, 2005, NMFS received a request from the Makah Indian Tribe for a waiver of the MMPA moratorium on the take of marine mammals to allow for take of ENP gray whales (*Eschrichtius robustus*). The Tribe requested that NMFS authorize a tribal hunt for ENP gray whales in the coastal portion of the Tribe's usual and accustomed fishing area for ceremonial and subsistence purposes and the making and sale of handicrafts. The MMPA imposes a general moratorium on the taking of marine mammals but authorizes the Secretary of Commerce to waive the moratorium and issue regulations governing the take if certain statutory criteria are met.

On April 5, 2019, NMFS published a Notice of Hearing and the associated proposed regulations in the **Federal Register** (84 FR 13639 and 84 FR 13604). Pursuant

to an interagency agreement, a Coast Guard Administrative Law Judge was assigned to conduct the formal hearing and issue a recommended decision in this matter under the procedures set forth at 50 CFR part 228.

A prehearing conference took place on June 17, 2019 at the Jackson Federal Building, Seattle, WA. In compliance with 50 CFR 228.12, Judge George J. Jordan issued a notice of final agenda for publication in the **Federal Register** (June 26, 2019; 84 FR 30088). The final agenda set out the issues of fact for the hearing and identified one new issue of fact which had not previously been included in the notice of hearing (April 5, 2019; 84 FR 13639).

At the prehearing conference, several parties requested a change in the date of the proceeding due to issues concerning the availability of witnesses and counsel. The presiding officer ordered a briefing on this issue and, after thoroughly considering all the parties' arguments, determined a continuance was warranted. After consulting with the parties during a second prehearing conference on July 23, 2019, the presiding officer set the hearing to begin on Thursday, November 14, 2019 at 1:00 p.m.

The presiding officer, Administrative Law Judge George J. Jordan, prepared the contents of this notice. A copy of the draft notice Judge Jordan submitted to the NMFS Regulations Unit for filing with the Office of the Federal Register (OFR) was made available to all parties to this proceeding. The NMFS Regulations Unit reviewed the notice to ensure consistency with the OFR filing requirements. NMFS was otherwise not involved in the review of the contents of the notice. The signature of NMFS West Coast

Regional Administrator Barry Thom is required to authorize the filing of the notice with the OFR.

Dated: July 30, 2019.

Barry A. Thom,

Regional Administrator, West Coast Region,

National Marine Fisheries Service.

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